

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

LUANN SWANSON and RON  
SWANSON,

Plaintiff,

vs.

HY-VEE, INC., an Iowa Corporation,

Defendant.

CIV. #22- 4180

**COMPLAINT AND  
DEMAND FOR JURY TRIAL**

COME NOW the Plaintiffs, by and through their attorneys of record, and for their Complaint against the above-named Defendant state and allege as follows:

**PARTIES**

1. Plaintiff LuAnn Swanson is a resident of Sioux Falls, South Dakota.
2. Plaintiff Ron Swanson is a resident of Sioux Falls, South Dakota and is the lawful spouse of Plaintiff LuAnn Swanson.
3. Defendant Hy-Vee, Inc. ("Defendant") is incorporated in the State of Iowa with its principal place of business in West Des Moines, Iowa. Defendant is a grocery store. At all times relevant hereto, Defendant was registered to do business and was conducting business in the State of South Dakota including a location at 4101 South Louise Avenue in Sioux Falls, South Dakota.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction over the persons and subject matter of this action pursuant to the provisions of 28 U.S.C. § 1332 because the amount of damages in controversy exceeds \$75,000.00, exclusive of interest and costs, and complete diversity of citizenship is present between Plaintiffs and Defendant.
5. Defendant is an entity with the capacity to sue and be sued in South Dakota, and, thus, venue is proper in this Court pursuant to 28 U.S.C. § 1391.

### FACTS

6. On or about June 19, 2021, Plaintiff LuAnn Swanson was a business invitee at the Defendant's place of business located at 4101 South Louise Avenue in Sioux Falls, South Dakota.
7. While shopping at Defendant's said location, Plaintiff LuAnn Swanson unexpectedly encountered and slipped on a grape that was on the tile floor while she was walking through the produce section, causing her to suddenly fall to the floor.
8. Plaintiff LuAnn Swanson landed on her left knee and was unable to stand up.
9. Plaintiff LuAnn Swanson was transported from Defendant's business to the local hospital via ambulance.
10. Plaintiff LuAnn Swanson sustained injuries, including but not limited to, fractures in her left kneecap resulting in multiple surgeries.
11. Pictures of her knee and injuries to Plaintiff LuAnn Swanson are as follows:



### COUNT I *Negligence*

12. Plaintiffs hereby reallege the above paragraphs of this Complaint and hereby incorporate them by reference as if fully set forth herein.

13. Defendant owed a duty of reasonable and ordinary care to Plaintiff LuAnn Swanson.
14. Defendant and its employees breached the duties owed to Plaintiff LuAnn Swanson by, including but not limited to, failing to act in a reasonable and safe manner not to harm others, failing to properly train and supervise the employees, failing to warn Plaintiff LuAnn Swanson, failing to exercise reasonable care to avoid injury to Plaintiff LuAnn Swanson, failing to exercise reasonable care in the operation of its property, and/or failing to exercise reasonable care to maintain the property in a reasonably safe condition.
15. At all times relevant hereto, Defendant's employees were acting within the scope of their actual, express, apparent, and/or implied authority, as well as acting within the scope of their employment duties for Defendant.
16. The conduct of the employees that resulted in the incident involving Plaintiff LuAnn Swanson was reasonably foreseeable, and therefore, imputable to Defendant under the doctrine of Respondeat Superior.
17. Pursuant to the doctrine of Respondeat Superior, Defendant is responsible for the negligent conduct of its employees.
18. As a direct and proximate result of Defendant's negligence, Plaintiff LuAnn Swanson has sustained past, present and future pain and suffering, permanent impairment and disability, scarring, a loss of the enjoyment of the capacity of life, emotional distress, past and future lost wages, past medical costs and expenses, and future medical costs and expenses all of which are recoverable under South Dakota law.

**COUNT II**  
***Premises Liability***

19. Plaintiffs hereby reallege paragraphs 1-18 of this Complaint and hereby incorporate them by reference as if fully set forth herein.
20. Defendant is the owner of real property where Plaintiff LuAnn Swanson's injuries occurred.
21. Defendant is a retail establishment open to the public for purposes of purchasing groceries and other retail items.
22. Plaintiff LuAnn Swanson was present at Defendant's said location (HyVee) for the purpose of purchasing groceries and other retail items, thus making her an invitee of the premises.

23. Defendant and its employees and agents owed a duty to exercise reasonable and ordinary care to Plaintiff LuAnn Swanson and to maintain its premises in a reasonably safe condition.
24. Defendant and its employees and agents breached its duties owed to Plaintiff LuAnn Swanson by, including but not limited to, failing to maintain its premises in a reasonably safe condition, failing to remove dangerous conditions on its premises, and failing to warn of dangerous conditions.
25. Defendant owned and controlled the property on which Plaintiff LuAnn Swanson was injured and knew or should have known of the dangerous condition(s), and should have expected that Plaintiff LuAnn Swanson would not have discovered or realized the danger or would fail to protect herself against it.
26. Plaintiff LuAnn Swanson's injuries were reasonably foreseeable to Defendant.
27. As a direct and proximate cause of Defendant and its employees and agents' negligence, Plaintiff LuAnn Swanson has sustained injuries and damages as previously set forth.

### **COUNT III**

#### ***Loss of Consortium***

28. Plaintiffs hereby reallege the above paragraphs of this Complaint and hereby incorporate them by reference as if fully set forth herein.
29. Defendant and its employees and agents owed Plaintiff LuAnn Swanson a duty to exercise ordinary care so as not to cause injury to the personal relationship between her and her husband, Plaintiff Ron Swanson.
30. As a direct and proximate result of the negligence of Defendant and its employees and agents, Plaintiff Ron Swanson has sustained the loss of his wife Plaintiff LuAnn Swanson's marital services, aid, comfort, society and companionship, as well as the value of Plaintiff LuAnn Swanson's lost future marital services, aid, comfort, society and companionship, all of which he is reasonably certain to be deprived in the future.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray for damages against Defendant as follows:

- (1) For Plaintiffs' compensatory, general, and special damages in an amount that the jury determines is just and reasonable under the circumstances;

- (2) For Plaintiffs' attorney fees, costs and disbursements herein;
- (3) For prejudgment and postjudgment interest; and
- (4) For such other and further relief as the Court determines is just and fair under the circumstances.

Dated this 21<sup>st</sup> day of December, 2022.

**JOHNSON, JANKLOW, ABDALLAH  
& REITER, LLP**

BY 

Scott A. Abdallah

Kimberly J. Lanham

P.O. Box 2348

Sioux Falls, SD 57101-2348

Phone: 605-338-4304

Fax: 605-338-4162

Email: [scott@janklowabdallah.com](mailto:scott@janklowabdallah.com)

[kim@janklowabdallah.com](mailto:kim@janklowabdallah.com)

*Attorneys for Plaintiffs*

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby respectfully demand a trial by jury on all issues so triable.

  
\_\_\_\_\_  
Scott A. Abdallah

Kimberly J. Lanham

JS 44 (Rev. 10/20)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

LUANN SWANSON AND RON SWANSON

(b) County of Residence of First Listed Plaintiff Union  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Johnson, Janklow, Abdallah & Reiter, P.O. Box 2348  
Sioux Falls, SD 57101 605-338-4304

**DEFENDANTS**

HY-VEE, INC.

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability			<input type="checkbox"/> 400 State Reapportionment	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability				<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<b>PERSONAL PROPERTY</b>	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 160 Stockholders' Suits	<input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 485 Telephone Consumer Protection Act	
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 791 Employee Retirement Income Security Act		<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 196 Franchise				<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 850 Securities/Commodities/Exchange	
				<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 890 Other Statutory Actions	
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>IMMIGRATION</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<b>Habeas Corpus:</b>	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence		<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 896 Arbitration	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<b>Other:</b>				
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other				
		<input type="checkbox"/> 550 Civil Rights				
		<input type="checkbox"/> 555 Prison Condition				
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement				

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1332 and 28 U.S.C. Section 1391

Brief description of cause:  
Personal injury involving a fall on the premises

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

greater than \$75,000

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE